Nov 16 1870
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~464.~~ ~~229~~ 46

ROBERT S. STEVENS, PLAINTIFF IN ERROR,

vs.

ADEL BELLEMARDE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED APRIL 22, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 464.

ROBERT S. STEVENS, PLAINTIFF IF ERROR,

vs.

ADEL BELLEMARDE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	1
Service	4	2
Petition in error	5	2
Petition	6	3
Summons	8	4
Answer	10	5
Judgment	11	5
New trial	12	6
Judgment	12	7
Bill of exceptions	14	8
Judgment of Supreme Court	19	9
Clerk's certificate	22	10

1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. judges of the supreme court of the State of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court before you or some of you, being the highest court of law or equity of the said State, in which a decission could be had in the said suit between Bell Man, plaintiff, and Robert S. Stevens, defendant, wherein was drawn in question the construction of a treaty, and also a statute of the United States, and the decission was against the right, title, and authority specially set up and claimed under such treaty and statute, a manifest error hath happened to the great damage of the said Robert S. Stevens, as by his complaint appears.

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then, under your seal, distinctly and openly, you

2 send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] A. S. THOMAS,
Clerk of U. S. Circuit Court District of Kansas.

(Indorsed:) Robert S. Stevens vs. Bell-Mare. Writ of error.

Filed January 8, 1869.

E. B. FOWLER, *Clerk.*

3 United States of America to Bell-Man:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Robert S. Stevens is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel A. Kingman, chief justice of the

supreme court of the State of Kansas, this 8th day of January, in the year of our Lord 1869.

SAMUEL A. KINGMAN.

(Indorsed:) Robert S. Stevens vs. Bell-Mare. Citation.

Filed January 9th, A. D. 1869.

E. B. FOWLER, *Clerk.*

4 STATE OF KANSAS, *Shawnee County, ss:*

Wilson Shannon, being first duly sworn, deposeth and saith, that on the 9th day of January, A. D. 1869, he delivered to David Brockway, esq., one of the attornies of record for the within-named Bell Mare, defendant in error, a true copy of the within citation, and at the same time exhibited to him the within citation.

WILSON SHANNON.

Sworn to and subscribed before this 9th day of January, A. D. 1869.

[SEAL.] E. B. FOWLER,
Clerk Supreme Court of State of Kansas.

Be it remembered, that on the 6th day of January, A. D. 1864, R. S. Stevens filed in the clerk's office of the supreme court of the State of Kansas a petition in error, together with the transcript of the court below attached thereto, wherein Bellmard was defendant; which said petition & transcript are in words and figures following, to wit:

5 State of Kansas supreme court.

ROBERT S. STEVENS, pl'ft, *vs.* ADEL BELLMARD, def't, } Petition in error to district court, Shawnee co.

The said Robert S. Stevens, plaintiff, complains of the said Adel[1] Bellmard, defendant, for that the said Adel Bellmard, at the November term of the district court, A. D. 1863, sitting in and for the county of Shawnee, in the said State, recovered a judgment by the consideration of said court against the said plaintiff, in a certain action then pending in said court, wherein the said Adel Bellmard was plaintiff and the said Robert S. Stevens was defendant; a copy of the record of said judgment and proceedings in which case duly certified is hereto attached, marked "A," and made a part of this petition. And the said Robert S. Stevens avers that there is error in the said record in this, to wit:

1st. That the said court erred in rejecting the deed from the said Adel Bellmard to the said Robert S. Stevens for the premises described in the petition.

2d. That the judgment was given for the said (Robert) Adel Bellmard when it ought to have been given for the said Rob-

ert S. Stevens. The said Robert S. Stevens therefore prays that the said judgment be reversed, and the said plaintiff restored to all things he has lost by reason thereof.

WILSON SHANNON,
Attorney for Plaintiff in Er.

We hereby waive the issuance and service of a summons in the above-entitled action, and hereby make a voluntary appearance therein.

J. & D. BROCKWAY,
Attorneys for Def't in Error.

ADEL BELLMARD
s.
ROBERT S. STEVENS.

Be it remembered, that on the second day of March, in the year of our Lord one thousand eight hundred and sixty-three, the said plaintiff filed in the clerk's office of the district court, within and for Shawnee county, in the third judicial district of the State of Kansas, her certain petition in the words and figures following, to wit:

District court, Shawnee county, State of Kansas.

ADEL BELLMAND, plaintiff,
vs.
ROBERT S. STEVENS, def't. } Petition.

7 The said Adel Bellmond, plaintiff, complains of the said Robert S. Stevens, defendant, for that the said plaintiff is owner in fee simple of, and has a real estate in, the following-described (property) real property, to wit, the south-west quarter of section or reserve number one of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee and State of Kansas, consisting of one hundred and sixty acres of land, and the said plaintiff is entitled to the possession thereof, and the said defendant unlawfully keeps the said plaintiff out of the possession [there] of the said real property. Wherefore the said plaintiff claims judgment against the said defendant for the delivery of the possession of the said premises to the said plaintiff, and also for the costs of this action.

J. & D. BROCKWAY,
Attorneys for Plaintiff.

Upon which are the endorsements in the words and figures following, to wit: Adel Bellmard vs. Robert S. Stevens. Petition.
Filed March 2d, 1863.

H. McARTHUR, *Clerk*,
By J. B. WHITAKER, *Dept'y.*

Precipe.

And afterwards, to wit, on the 2d day of March, A. D. 1863,
8 the said plaintiff filed [in] in the clerk's office of the court aforesaid his certain precipe for a summons, in the words and figures following, to wit:

District court, Shawnee county, State of Kansas.

ADEL BELLMAND, plaintiff,
vs.
ROBERT S. STEVENS, defendant. } Precipe.

The clerk of said court will issue a summons in the action against the said Robert S. Stevens, directed to the sheriff of Shawnee county, returnable according to law.

J. & D. BROCKWAY,
Att'ys for Plaintiff.

Upon which are the endorsements in the words and figures [to wit] following, to wit:

Adel Bellmard vs. Robert S. Stevens. 528. Precipe.
Filed March 2d, 1863.

H. MCARTHUR, *Clerk*,
By J. B. WHITAKER, *Dep'y*.

Summons.

And afterwards, to wit, on the 2d day of March, A. D. 1863, was issued out of the clerk's office of the court aforesaid, a certain summons in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Kansas, County of Shawnee, ss:

The State of Kansas to the sheriff of Shawnee county, greeting:

You are hereby commanded to notify Robert S. Stevens that
9 he has been sued by Adel Bellmand in the district court, within and for the county of Shawnee in the third judicial district of the State of Kansas, sitting for the trial of causes arising under the laws of State of Kansas, and that unless he answer by the first day of April, A. D. 1863, the petition of the said Adel Bellmerred against him filed in the clerk's office of the county aforesaid, such petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on or before the 12th day of March, A. D. 1863. Witness my hand and private seal, (there being no public seal provided,) affixed at my office in the city of Topeka, this 2d day of March, A. D. 1863.

[SEAL.] H. MCARTHUR, *Clerk*,
By J. B. WHITTAKER, *Dep'y*.

[U. S. R. S. (50.)]

Upon which are the endorsements in the words and figures following, to wit:

Adel Bellmard vs. Robert S. Stevens. D. C. S. C. No. 528. Summons issued, March 2d, 1863. Returnable March 12, 1863.

Received this writ this 2d day of March, A. D. 1863, at 3 of the clock p. m.

H. HALE, *Sheriff.*

I executed this writ this 2d day of March, A. D. 1863, by
10 delivering a true (certificate) and certified copy of this summons to the defendant, Robert S. Stevens, in person.

Fees: Service, .75; miles, 10, 0.86.

A. H. HALE, *Sh'f.*

Filed March 7, 1863.

H. McARTHUR, *Clerk,*
By J. B. WHITTAKER, *Dep'y.*

Answer.

And afterwards, to wit, on the 18 day of March, A. D. 1863, the said defendant filed (with) in the clerk's office of the court aforesai d his certain answer in the words and figures following, to wit:

State of Kansas, Shawnee county, district court.

ADEL BELLMAND, plf.,
vs.
ROBERT S. STEVENS, def't. } Answer of defendant.

And now comes the said Robert S. Stevens, defendant, and for answer to the petition of the said Adel Bellmard, saith that the said Adel Bellmard is not the owner in fee simple and has no real estate in the lands and tenements in her said petition demanded in manner and form as is therein set forth; and of this he puts himself upon the country.

ROBERT S. STEVENS.
By WILSON SHANNON, *his Att'y.*

Upon which are the endorsements in the words and figures following, to wit:

Adel Bellmared vs. Robert S. Stevens. Answer Wilson Shannon.

11 Filed March 18, 1863.

HIRAM McARTHUR, *Clerk.*

Judgment.

And afterwards, to wit, on the 23d day of May, A. D. 1863, at the May term of the court aforesaid, among others, was had the follow-
ing proceedings, to wit:

ADEL BELLMARD
vs.
ROBERT S. STEVENS.

And now comes the said plaintiff by J. & D. Brockway, her att'ys, and also comes the said defendant, by Elmore & Shannon, his attorneys, and the issues being joined between the parties, and the parties being ready for trial, comes a jury, to wit: R. Galt, L. J. Atwood, William H. Morgan, John Porter, Peter Spangler, Peter Keyes, William Flesher, Hiram Shields, Daniel Jillson, Isaac Renfro, Lysanius Wood, & S. D. McDonald, twelve good and lawful men of the body of the county of Shawnee, who, being duly sworn to try the issue herein joined between the parties, and who, upon hearing the proofs and allegations by the parties submitted, and being charged by the court, render the following verdict, to wit:

ADEL BELLMORED
vs.
ROBERT S. STEVENS. } District court Shawnee county.

We, the jurors in this cause, find for the plaintiff.

HIRAM SHIELDS, *Foreman.*

12 Now, therefore, it is considered and adjudged by the court now here, that the said plaintiff, Adel Bellmared, recover of the said defendant, Robert S. Stevens, the lands and tenements in the said plaintiff's petition described, to wit: the southwest quarter of section or reserve number one of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee and State of Kansas, and her costs herein expended, and that the said plaintiff have possession of said premises, and hereof let execution issue.

New trial.

And afterwards, to wit, on the 16th day of June, A. D. 1863, at the term and court aforesaid, among others were had the following proceedings, to wit:

ADEL BELLMARD
vs.
ROBERT S. STEVENS. } 528.—Motion for a new trial.

And now comes the said defendant and moves the court for a new trial in this cause as provided in section No. 574 of the code of civil procedure; see volume compiled laws of the State of Kansas, 1862, page 524.

ROBERT S. STEVENS, *Defendant.*

Judgment.

And afterwards, to wit, on the 18th day of November, A. D. 1863, at the November term of the court aforesaid, among others were had the following proceedings, to wit:

ADEL BELLMARD
vs.
ROBERT S. STEVENS.

And now comes the said plaintiff, by her attorneys, J. & D.
13 Brockway, and also comes said defendant, by Shannon & Shannon, his attorneys, and the issues being joined herein, and the parties being ready for trial, comes a jury, to wit: Isaac Renfro, Peter Heel, F. P. Baker, B. A. Murphy, John W. Brown, Jacob Willitts, Thomas McGuire, William P. Roberts, Lysanius Wood, Adam Bower, Nathaniel L. Williams, and William Sheup, twelve good and lawful men of the body of the county of Shawnee, who, being duly sworn to try the issues herein joined, and who, upon hearing the proofs and allegations by the parties submitted, and being charged by the court, return into court, without leaving the jury-box, the following verdict, to wit:

ADEL BELLMARD
vs.
ROBERT S. STEVENS. } District court Shawnee county.

We the jurors in this cause find for the plaintiff.

LYSANIUS WOOD, *Foreman.*

Now, therefore, it is considered and adjudged by the court now here, that the said plaintiff, Adel Bellmard, recover of the said defendant, Robert S. Stevens, the lands and tenements in the said plaintiff's petition described, to wit, the southwest quarter of section or reserve number one of the lands known as the Kansas half-breed Indian lands, situated in said county of Shawnee, and State of Kansas, consisting of one hundred and sixty acres of land, and her costs herein
14 expended; and that the said plaintiff have possession of said premises, and hereof let execution issue.

And afterwards, to wit, on the 23d day of November, A. D. 1863, at the term and court last aforesaid, among others were had the following proceedings, to wit:

ADEL BELLMARD
vs.
ROBERT S. STEVENS. } 528.

And now comes said defendant, by Wilson Shannon, his att'y, and presents to the court his certain bill of exceptions taken on the trial of this cause, which is allowed and signed by the court, and ordered to be placed on file with the papers and made a part of the record in this case.

Bill of exceptions.

And afterwards, to wit, on the 23 day of November, A. D. 1863, the said defendant filed in the clerk's office of the court aforesaid, his certain bill of exceptions in the words and figures following, to wit:

State of Kansas, Shawnee county, district court.

ADEL BELLMAND, pl'f,
vs.
ROBERT S. STEVENS, def't.

Be it remembered, that on the trial of this cause in the district court sitting in and for the said county of Shawnee, at the November term thereof, A. D. 1863.

15 The counsel for the said defendant admitted that the said plaintiff is the person named as reservee in reserve or section number one in the 6th article of the treaty made and concluded at the city of St. Louis, in the State of Missouri on the 3d day of June, A. D. 1825, between the United States of America and the Kansas nation of Indians, and by agreement of the counsel as well for the said plaintiff as said defendant said treaty was admitted as evidence to said jury; and it was further admitted by the attorney for the said defendant that the premises described in said petition are part and parcel of the said reserve or section number one named in the 6th article of the said treaty; and that said plaintiff was in possession of said premises on the 25th day of September, A. D. 1860, whereupon the said plaintiff rested her case.

The said defendant, to maintain the issues on his part, then produced [produced] in court and offered in evidence a deed signed by Moses Bellmared, and Adel Bellmared, his wife, and dated on the 25 of September, A. D. 1860, and duly acknowledged on the same day by each of said grantors, before F. W. Giles, notary public for said county of Shawnee, and attested by his notarial seal; which deed purported to convey to the said defendant the said premises in

16 the said petition described. for the consideration of one thousand dollars, the receipt of which is acknowledged in said deed. It was also agreed by the counsel for the said plaintiff that the said Adel Bellmard, one of the grantors in said deed to the said defendant, is the same person with the said plaintiff. And it was further agreed by the counsel for the said plaintiff and said defendant that an act of Congress, entitled an act to settle the titles to certain lands set apart for the use of certain half-breed Kansas Indians in Kansas Territory, passed the 26th day of May, A. D. 1860, and the resolution of Congress repealing part of the last-named act, passed 17 day of July, A. D. 1862, should be considered in evidence in this case. Whereupon the said plaintiff, by her attorney, objected to said deed going in evidence to the jury, on the ground that at the time of the execution and delivery thereof as aforesaid, the said plaintiff had no legal right or authority under the treaty and laws of Congress

above referred to, to convey said premises in the said deed described to the said defendant, and had no right or legal power to aleenate the same, which objection of the said plaintiff to the said deed
17 being received in evidence was sustained by the court and the same was excluded from the jury by the court.

To which ruling of the court the defendant, by his attorneys, then and there excepted, and prayed that his bill of exceptions in that behalf might be allowed, which is accordingly done, and, on motion of said defendant, made a part of the record in this case.

November, A. D. 1863.

JACOB SAFFORD, *Judge.*

Upon which are the endorsements in the words and figures following, to wit:

528. Adel Bellmard vs. Robert S. Stevens. Bill of exceptions.

Filed Nov. 23, 1863.

HIRAM McARTHUR, *Clerk.*

STATE OF KANSAS, *Shawnee County, ss:*

I, Hiram McArthur, clerk of the district court within and for the county of Shawnee and State of Kansas, do hereby certify that the foregoing is a true copy of the papers and transcript of the record in the above-entitled cause, as the same now remains on file and of record in my office.

Witness my hand and [seal] the seal of said court affixed at
18 office, in the city of Topeka, this 5th day of January, A. D. 1864.

HIRAM McARTHUR, *Clerk.*

[Stamp 5.]

19 And on the 15th day of January, A. D. 1864, the following proceedings were had, to wit:

Supreme court State of Kansas.

ROBERT S. STEVENS
vs.
ADEL BELMARD.

This cause coming on to be heard on the petition in error, and a transcript of the record of the district court of Shawnee county, and the argument of counsel being heard, as well for the plaintiff as defendant, the court decided that at the date of the said deed in the bill of exceptions mentioned from the said defendant in error to the said plaintiff in error, the said defendant had no right or legal authority to sell and convey the said premises in the petition of the said plaintiff below described under the treaty made and con-
20 cluded at the city of St. Louis, in the State of Missouri, on the 3d day of June, A. D. 1825, between the United States

of America and the Kansas nation of Indians in Kansas [in Kansas] Territory, passed the 26th day of May, A. D. 1860, and that said deed from said defendant to the said plaintiff is void, and that the same was rightfully rejected in the court below. Whereupon the court find that there is no error in the proceedings and judgment of the court below, and the court do order and adjudge that the judgment of the court below be, and the same is hereby, confirmed, and the counsel for the plaintiff in error excepts to the ruling of the court, and prays that his exceptions may be noted on the journals of this court, which is accordingly done, by order of this court, and it is further considered and adjudged that the plaintiff in error, Robert S. Stevens, pay the costs herein, and that execution issue therefor.

21 And on the 8th day of January, A. D. 1869, a bond was given and approved of by Samuel A. Kingman, chief justice of the supreme court of the State of Kansas, and remains on file in this office.

And also, on same day, to wit, the 8th day of January, A. D. 1869, a copy of the writ of error in this case endorsed in words as follows, to wit:

"Copy of writ of error lodged in pursuance of the statute in such case made and provided for the above named Bell-Mard.

"WILSON SHANNON,
"*Attorney for Pl'ff.*"

Filed in this office on the 8th day of January, A. D. 1869, and still remains on file.

E. B. FOWLER, *Clerk.*

22 STATE OF KANSAS, *Supreme Court, ss:*

In obedience to the command contained in the within writ, I, E. B. Fowler, clerk of the supreme court of the State of Kansas, herewith forward to the Supreme Court of the United States held at Washington, a full, true, and complete transcript of the record and proceedings in the case of Robert S. Stevens, plaintiff in error, vs. Bell-Mard, defendant in error, as fully as the same remains of record and on file in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court. Done at office in Topeka this 11th day of January, A. D. 1869.

[SEAL.] E. B. FOWLER, *Clerk.*

10227

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1869.

ROBERT S. STEVENS
vs
VICTORIA SMITH. } No. 227.

ROBERT S. STEVENS
vs.
PELAGIE DE AUBRIE. } No. 228.

ROBERT S. STEVENS
vs.
ADEL BELLEMARDE. } No. 229.

Error to the Supreme Court of the Sate of Kansas.

BRIEF FOR APPELLANT

BY

J. H. BRADLEY, J. W. DENVER, JAMES HUGHES,

Attys. for Plff. in Error.

WASHINGTON, D. C.
PRINTED BY WM. H. MOORE, 511 ELEVENTH STREET.
1870.

IN THE

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1869.

ROBERT S. STEVENS vs. VICTORIA SMITH.	No. 227.	To the adjourned Term, 1870.
ROBERT S. STEVENS vs. PELAGIE DE AUBRIE.	No. 228.	
ROBERT S. STEVENS vs. ADEL BELLEMARDE.	No. 229.	

These three cases involve the same questions, and are therefore presented together for the consideration of the Court.

They are each writs of error to the Supreme Court of the State of Kansas.

The plaintiff in error claims title to land under a treaty and a law of the United States, and the decision of the Court below were against him.

CASE.

The substance of the case is, that by the 6th article of the treaty between the United States and the Kansas Indians, 3d June, 1825, 7 Stat., 244–5, certain reservations of one mile square were made to each of certain named half-breed Indians, and among others to the defendants in error. They were to be located on the north side of the Kansas river; the beginning was fixed by the treaty, and they were to be surveyed and laid out in the order named in the treaty. They were subsequently surveyed, located and numbered according to the treaty.

Victoria went into possession under this survey and location, and continued so in possession until the 14th day of August, 1860,

and was then in possession. On that days he executed a deed to the said Stevens purporting to convey to him the N. E. quarter section of the land thus surveyed and located, and occupied and possessed by her.

On the 2d March, 1863, Victoria filed her petition in the District Court of Shawanee county, Kansas, claiming title to and possession of the northeast quarter of one of these reserved sections of land, then in the possession of Stevens. (P. 3.)

A jury trial was had and judgment rendered for plaintiff on the 18th Nov., 1863. Pp. 6 and 7.

A bill of exceptions was taken by defendant, by which it appears (p. 8) that the Court refused to let the deed from Victoria Smith, mentioned above, be read in evidence, "on the ground that at the time of the execution and delivery thereof as aforesaid the plaintiff had no legal rights or authority under the treaty and laws of Congress to convey, &c.

From this judgment a writ of error was sued out to the Supreme Court of Kansas. That Court affirmed the judgment of the Court below, (p. 9,) and this writ of error is brought to cancel this last judgment.

POINTS.

The language of the 6th article of the treaty, 7 Stat., 245, is as follows: "From the lands above ceded to the United States there shall be made the following reservations, of one mile square, for each of the half-breeds of the Kansas nation, viz: * * to be located on the north side of Kansas river, in the order above named, commencing at the line of the Kansas reservation, and extending down the Kansas river for quantity."

First. It will be contended that upon the survey and location of these sections respectively, and the delivery of possession to the respective reservees, they were by the terms of the treaty respectively clothed with a fee-simple title in the reservations, and that a patent was not necessary to complete the title.

The United States vs. *Jehiel Brooks*, 10 *How.*, 442.

In that case, by the treaty between the United States and the Caddo Indians, (p. 451,) as follows:

"Article 1st. It is agreed that the legal representatives of said Francois Grappe, deceased, and his three sons, Jacques, Domi-

nique, and Balthazzar Grappe, shall have their right to the said four leagues of land reserved for them, their heirs and assigns, forever; the said lands to be taken out of the lands ceded to the United States by the said Caddo nation of Indians, as expressed in the treaty to which these articles are supplementary. And said four leagues of land shall be laid off in one body in the southeast corner of their lands ceded as aforesaid and bounded by the Red river four leagues, and by the Pascagoula bayou one league, running back for quantity from each." At p. 460, the Court say: "We think the treaty gave to the Grappes a fee-simple title to all the rights which the Caddoes had in the land as fully as any patent from the Government could make one. The reservation to the Grappes, 'their heirs and assigns,' creates as absolute a fee as any subsequent act upon the part of the United States could make. Nothing further was contemplated by the treaty. Brooks being the alienee of the Grappes for the entire reservation, he may hold it against any claim of the United States as his alienors would have done."

Here the reservation was to the Grappes, "their heirs and assigns, forever."

But that is not material.

Doe and others vs. *Wilson*, 23 *How.*, 457, 458.

In that case the language of the reservation was: "The United States agree to grant to each of the following persons the quantity of land annexed to their names, which lands shall be conveyed to them by patent."

This was on the 27th October, 1832. (7 Stat., 400.) Among other persons named, was "To Pet-chi-co two sections." Here were no words of perpetuity.

In February, 1833, (23 How'd, 462,) by a deed in fee-simple, Pet-chi-co conveyed to Alexis Coquillard and David H. Colerick, of the State of Indiana, "all those two sections of land lying in the State aforesaid, in the region of country or territory ceded by the treaty of 27th October, 1832." * * "Under this deed the defendant holds possession."

"And on the trial below, the Court was asked to instruct the jury 'that Pet-chi-co held no interest under the treaty in the lands in question up to the time of his death that was assignable, he having died before the location of the land and before the patents issued."

At p. 463, this Court says: "The only question presented by the record which we feel ourselves called on to decide is, whether Pet-chi-co's deed of February, 1833, vested his title in Coquillard." * *

"The treaty itself converted the reserved sections into individual property. The Indians as a nation reserved no interest in the territory ceded; but, as part of the consideration for the cession, certain individuals of the nation had conferred on them portions of the land to which the United States title was either added, or promised to be added, and it matters not which for the purposes of this controversy for possession."

Page 464 they say:

"We hold that Pet-chi-co was tenant in common with the United States and could sell his reserved interest, and that when the United States selected the land reserved to him, and made partition, (of which the patent is conclusive evidence,) his grantees took the interest he would have taken if living."

There were no words of perpetuity here, and these two cases seem to be conclusive of the question whether the deed offered in evidence was rightfully rejected. But,

Second. If the title did not pass by the treaty, it did pass in fee by the act of Congress, 26th May, 1860, (12 Statues, 21,) and the reservees after that act had the right to make a deed in fee.

The act recites that the land reserved "had been surveyed and allotted to each of the said half-breeds in the order in which they are named in, and in accordance with, the provision of the said sixth article." And it enacts, "that *all the title, interest, and estate of the United States is hereby vested* in the said reservees, who are now living on the land reserved, set apart and allotted to them respectively by the said sixth article of said treaty; * * but nothing herein contained shall be construed to give any force, or efficacy, or binding effect to any contract in writing or otherwise for the sale or disposition of any lands named in said act *heretofore* made by any of said reservees, or their heirs."

The words of conveyance are very comprehensive.

It is a grant, and is to be taken most favorably for the grantees. There is nothing left in the United States which could draw to it the reversion. Words of perpetuity in such an instrument, made with such full intent, were not needed.

If they "vested" the fee in the grantees, who were grantees for a valuable consideration, viz: the cession of the lands by the na-

tion, any restraint upon alienation by the grantees would have been void. They took freed from such condition, if there was one.

And so Congress seem to have considered it, for they do not prohibit *future* alienation.

It was thought, however, by the Court below that the 2d and 3d sections of this act were and so are intended to be restraints on the disposing power of the grantees, and to limit that power to an application to the Secretary of the Interior, by whom the sale was authorized to be made. This would have been a plain violation of one of the canons of the law regulating real estate, and unless the intent is too clear to admit of doubt such construction cannot prevail.

Those two sections are susceptible of a different construction, in perfect harmony with the construction already put upon the first section.

The 2d section provides, that "the Secretary of the Interior, when requested by them or either of them so to do, is hereby authorized to sell such lands belonging to those so requesting him for the benefit of such reservees or such heirs," * * * "in accordance with such rules and regulations as may be prescribed by the Commissioner of Indian Affairs and approved by the Secretary of the Interior; and patents in the usual form shall be issued to the purchasers of the said land, in accordance with the provisions of this act."

Section 3d provides, that the proceeds of the sales shall be paid to the parties entitled thoreto, or applied by the Secretary for their benefit in such manner as he may think most advantageous to the parties.

The Government had already conveyed these lands to the Indians with an unincumbered title. But they desired to protect the Indians against their own improvidence, and to do so imposed this trust on the Secretary, to be exercised on the application of the owner of the lands. It was a new duty assigned to the Secretary, but neither in terms, nor by necessary intendment does it fetter the right of the Indian to dispose of his lands as he may see fit.

This reconciles the whole act with the well known established principle of law. And this view is strengthened by the terms of the 11th Art. of the treaty, p. 247, prohibiting the sale of the lands reserved to the nation, but not prohibiting the sale of the private reservations.

But:

Third. There is no prohibition in the treaty or the act of 1860 against future sales by the reservees, they being in possession of the land. They clearly had a title to the possession, with an inchoate right to the fee. The defendant in error being in possession of the land in controversy with this inchoate title, conveyed to the plaintiff in error on 14 Aug., 1860, whatever title she had.

Congress, by joint resolution passed 17 July, 1862, 12 Stat., 628, repealed the 2d and 3d sections of the act of 1860.

That repeal operated by relation to vest in the purchaser the full title which was vested in her by the 1st section of the act 1860; but which is supposed to have been clogged with a trust for sale by those two sections.

Landes vs. Brant, 10 *How'd*, 372–3.

It follows, if these propositions or either of them are correct, the Court erred, and the judgment must be reversed.

J. H. BRADLEY,
J. W. DENVER,
JAMES HUGHES,
Attys. for Pltff. in Error.